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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/868,411	06/14/2001	Ran Kornowski	23254.05	9283
7590 01/13/2004 JUNE M. LEARN GRAY CARY WARE & FREIDENRICH LLP			EXAMINER AKHAVAN, RAMIN	
			4365 EXECUTIVE DRIVE, SUITE 1100	
SAN DIEGO, CA 92121-2133			1636	6
		•	DATE MAILED: 01/13/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

		The Copy			
	Application No.	Applicant(s)			
	09/868,411	KORNOWSKI ET AL.			
Office Action Summary	Examin r	Art Unit			
	Ray Akhavan	1636			
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet with the c	orrespondence address			
A SHORTENED STATUTORY PERIOD FOR REPL THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a repl - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statute - Any reply received by the Office later than three months after the mailin earned patent term adjustment. See 37 CFR 1.704(b).  Status	136(a). In no event, however, may a reply be timely within the statutory minimum of thirty (30) days will apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).			
1) Responsive to communication(s) filed on Jul	<u>/ 23, 2001</u> .				
2a) ☐ This action is <b>FINAL</b> . 2b) ☐ The	nis action is non-final.	,			
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims					
4)⊠ Claim(s) <u>1-102</u> is/are pending in the application.					
4a) Of the above claim(s) is/are withdrawn from consideration.					
5) Claim(s) is/are allowed.					
6) Claim(s) is/are rejected.					
7) Claim(s) is/are objected to.					
8) Claim(s) 1-102 are subject to restriction and/o	r election requirement.				
Application Papers					
9) The specification is objected to by the Examiner.					
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
11)☐ The proposed drawing correction filed on is: a)☐ approved b)☐ disapproved by the Examiner.					
If approved, corrected drawings are required in reply to this Office action.					
12)☐ The oath or declaration is objected to by the Examiner.					
Priority under 35 U.S.C. §§ 119 and 120					
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).					
a)☐ All b)☐ Some * c)☐ None of:					
1. Certified copies of the priority documents have been received.					
2. Certified copies of the priority documents have been received in Application No					
<ul> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>					
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).					
a) The translation of the foreign language provisional application has been received.  15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.					
· ·	uc priority under 35 O.S.C. 99 120	Janu/ULIZI.			
Attachment(s)  1) Notice of References Cited (PTO-892)	4) Interview Summar	y (PTO-413) Paper No(s)			
<ol> <li>Notice of References Cited (PTO-692)</li> <li>Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>Information Disclosure Statement(s) (PTO-1449) Paper No(s)</li> </ol>	5) Notice of Informal	Patent Application (PTO-152)			

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## **DETAILED ACTION**

## Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121 and 372. This application contains the following inventions or group of inventions that are not so linked as to form a single inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, in response to this action applicant is required to elect a single invention to which the claims must be restricted. The groups are as follows:

- I. Claims 1-9, 12, 14-27, 30-44, 47-61, 64-78, 81-90 and 93-102 drawn to five different methods and compositions involving administration of autologous bone marrow cells that may or may not have been subject to stimulation, hypoxia or conditioned media.
- II. Claims 1, 7, 10-11, 19, 28-29, 36, 45-46, 53, 62-63, 70, 79-80, 87 and 91-92, drawn to five different methods and cells involving administration of genetically engineered autologous bone marrow cells

The inventions listed in Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because under PCR Rule 13.2 which indicates that unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features (i.e. technical features that define a contribution which each of the inventions considered as a whole makes over the prior art).

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The special technical feature in Group II is transfection of cells and inherently involves gene therapy, where the transfected cells express a "relevant" gene. This is not the same special technical feature present in Group I, which involves use of cells without genetic modification.

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Applicant is advised that a reply to this restriction requirement must include an election for the single invention to be examined, for the reply to be complete, notwithstanding that the requirement be traversed (37 CFR 1.143). Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if none or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanies by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Akhavan whose telephone number is 703-305-4454. The examiner can normally be reached on 8:00-4:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on 703-305-1998. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-9306 for regular communications and 703-872-9306 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0198.

GERRY LEFFERS
PRIMARY EXAMINER